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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/048,132	06/12/2002	Wolfgang Heimberg	REN-12804	2842
7609	7590	03/28/2005	EXAMINER	
RANKIN, HILL, PORTER & CLARK, LLP			NAGPAUL, JYOTI	
925 EUCLID AVENUE, SUITE 700			ART UNIT	
CLEVELAND, OH 44115-1405			PAPER NUMBER	
			1743	

DATE MAILED: 03/28/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/048,132	HEIMBERG ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Jyoti Nagpaul	1743	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

**A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.**

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 11-27 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 11-27 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |  |
|---|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)            |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>07/30/02</u> | 6) <input type="checkbox"/> Other: ____  |

## DETAILED ACTION

### *Drawings*

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the “shape of a flat trough” which is recited in **claim 11**, line 7 and “segmented hollow sphere” which is recited in **claims 14 and 15** must be shown or the feature(s) canceled from the claim(s). With respect to claims **17-20**, it is extremely unclear and vague what the “pick-up surface” is? Is it the thickness of the rim? No new matter should be entered. Corrected drawing sheets are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as “amended.” If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. The replacement sheet(s) should be labeled “Replacement Sheet” in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Claim Rejections - 35 USC § 112***

2. **Claims 11-27** are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. It is extremely unclear as to what the applicant is claiming in regards to "flat trough" in claim 11. Does applicant mean the sides of the trough is "flat"? With respect to claims 14 and 15, claim 11 claims a "flat trough." However, in claims 14 and 15 applicant recites "a hollow cone and a segmented hollow sphere". Applicant discloses on page 7, line 6 in the specifications "trough-shaped". It is known that troughs come in various shapes however "a hollow cone and a segmented hollow sphere" does not further limit the shape of a flat trough. It appears that applicant is trying to redefine the structure. Thus these claims are improper and extremely unclear because none of these structures are "flat".

***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. **Claims 11,17 and 19** are rejected under 35 U.S.C. 102(b) as being anticipated by Rees.

Rees teaches a device for collection of a liquid sample. The device includes a sample dispenser body (1) having at its end a sample pick-up surface (15) bounded by a continuous edge. The sample pick-surface is provided with a recess (17) such that

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when the sample pick-up (15) surface is dipped into a sample reservoir, a droplet of liquid sample of predetermined size adheres to the sample pick-up surface. By placing of the sample pick-up surface on the sample absorbing area, the sample is completely dispensed. The recess is in the shape of a flat trough (See figure 3). It appears the recess has a depth of less than 50% of the width of the sample pick-up surface. (Col. 3, Lines 6-15) With respect to Claim 19, the sample-pick up surface (Unlabeled, see Figure 3) is polished and represented by a free end face of the sample dispenser body in the form of an elongated body. Rees further discloses the tube maybe made of suitable extrudable plastics, such as polyethylene, polypropylene, or the like. (Col. 2, Lines 35-37)

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

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This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

5. **Claims 12-13, 21-22,25 and 27** are rejected under 35 U.S.C. 103(a) as being unpatentable over Rees. (US 6555386)

Rees fails to disclose the sample pick-up surface is less than 2 mm<sup>2</sup> and less than 1 mm<sup>2</sup> with regards to claims 12 and 13, respectively. With respect to claims 21 and 22, Rees fails to disclose a cylinder section with a diameter of about 1 mm to 2 mm and a cylindrical section having a diameter of about 1.2 mm to about 1.7 mm. With respect to claim 25, Rees fails to disclose the two flattened walls, preferably spaced from about 0.8 mm to about 1.2 mm apart. However, Rees does disclose the internal bore is typically 0.1 to 3mm. (Col. 1, Lines 14-15) Thus the tip appears to be smaller than the bore. According to *In re Aller*, 220 F.2d 454, 456, 105 USPQ 233, 235(CCPA 1955) It is not inventive to discover the optimum or workable ranges by routine experimentation. It would have been obvious to one of the ordinary skill in this art at the time of the invention by applicant to modify the device of Rees in order to achieve optimization of the dispensing device.

With respect to claim 27, Reese fails to explicitly disclose a foam material for cleaning. It is conventionally known in the art to use different absorbent materials to clean capillary tubes, such as sponges or foams, with soap or different cleaning fluids. Where the tube is pressed into the absorbent material. It would have been obvious to one of the ordinary skill in this art at the time of the invention by applicant to provide a foam material for cleaning of the recess such that the dispenser is pressed into the foam material in order to avoid contamination of samples.

***Allowable Subject Matter***

6. **Claims 14-16,18,20,23-24 and 26** would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Prior does not teach or fairly suggest a recess has the shape of a hollow cone or a segmented hollow sphere.


***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jyoti Nagpaul whose telephone number is 571-272-1273. The examiner can normally be reached on Monday thru Friday (8:00-4:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jill Warden can be reached on 571-272-1267. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

JN

  
Jill Warden  
Supervisory Patent Examiner  
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